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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: Texas Service Center Date: SEP 7 2000

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

Public Copy

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability as a trainer and exhibitor of Paso Fino horses. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

The regulation at 8 C.F.R. 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The

[redacted]

petitioner has submitted evidence which, he claims, meets the following criteria.

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

The petitioner won first, second and third place at various riding events at a 1997 exhibition in [redacted] Documentation from the events shows that nearly all of the entrants were based in Florida. Prizes in an essentially statewide competition are not national or international in scope.

The petitioner submits photographs from other events, showing the petitioner and horses with prize ribbons. The petitioner states that he won the ribbons at the [redacted] but the record contains no further documentation of the event or its overall significance.

An article from an unidentified publication discusses the winners of a horse show in Colombia:

> The pride of [redacted] in [redacted], [redacted] showed absolute control over his opponents during the famous and prestigious [redacted] 1995 edition. [redacted] - who seems to have no rivals to match him in the Colombian arena - added one more championship to his already long list of victories. [redacted] has won in every corner of the [redacted] American country, becoming a national idol.
>
> [redacted] . . . ridden by his new trainer [the petitioner], won the class for paso fino stallions so convincingly that the judges . . . declared vacant the second place as [a] sign of [redacted] superiority over the rest.

While this article indicates that the petitioner was the rider of a champion horse at a "famous and prestigious" horse show, the article also indicates that the horse in question was already "a national idol" with a "long list of victories" before the petitioner took over as the "new trainer." The single mention of the petitioner in the above article, compared to the several mentions of the horse, indicates that the horse rather than the rider received the bulk of the credit for the win.

Furthermore, official documents pertaining to [redacted] shows indicate that several judging criteria pertain to the horse's innate physical characteristics, such as hair color and body proportions, which are obviously beyond the control of any trainer. Advertisements in the record, showing stud fees in the thousands of dollars for some of these horses, support the assertion that the genetic constitution of individual horses is a critical factor in these shows.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

The petitioner submits copies of his membership cards from the [redacted] (the [redacted]) and the U.S.A. [redacted] Association. Counsel asserts that these memberships are "available only to master trainers of truly extraordinary ability, riding champion horses and winning major awards." The petitioner has since submitted a copy of the [redacted] Constitution and Rule Book, which specifies no membership requirements except that members must be at least 18 years of age and pay their dues. The petitioner has submitted documentation regarding how a [redacted] member can become a judge, but there is no evidence that the petitioner is a judge.

[redacted] Executive Director of the Horse Association of [redacted] also known as [redacted] (a contraction of the Spanish "[redacted]"), states that the petitioner "is known to us as a responsible and honorable person." Mr. Gaviria Mendez does not state whether or not the petitioner is an ASOCABA member, nor does he specify [redacted] membership requirements. From its full name, [redacted] appears to be a local rather than national association [redacted] being a regional subdivision of Colombia).

Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

The petitioner submits articles about [redacted] and competitions in which that horse participated. The articles do not focus on the petitioner and his achievements as a trainer; rather, the articles are about the horse. While the photographs of the horse show the petitioner as the rider, it does not follow that the petitioner has earned a level of acclaim equal to that of the horse.

The petitioner has submitted several publications relating to [redacted] show horses. The articles in these publications discuss horses and shows, but pay little attention to the trainers. It does not appear, from the copious evidence accompanying this petition, that [redacted] horse trainers attract significant media attention even within specialized publications.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

To satisfy this criterion, counsel cites the above exhibits "depicting the major awards, winnings and the name of the champion [redacted], which he rode to winning first, second and third place awards." Counsel thus attempts to take evidence submitted

pertaining to the above criteria, and conform it to this criterion as well. This approach seems to conflict with the intent of the regulations to require a broad variety of evidence, which in turn is in keeping with the statutory requirement for "extensive documentation."

This criterion appears to be more suitable to the visual arts. If, for example, a major museum announces an exhibition of the works of Andrew Wyeth, the individuals attending that exhibition do so with the specific intention of viewing paintings by Andrew Wyeth. The petitioner, on the other hand, has "displayed" his work only at [redacted] with a multitude of other horses and trainers. The petitioner has not shown that a significant number of spectators attended the event specifically to watch his performance, or that he as an individual garnered more attention and recognition than the other trainers. While the petitioner has established the reputation of Capitàn, it is the reputation of the petitioner himself which is at issue in this proceeding. The statute and regulations do not allow for acclaim by association, and the petitioner is not as renowned as Capitàn simply by virtue of being that horse's "new trainer" after the horse had already earned its reputation.

Beyond the above criteria, the petitioner has submitted several witness letters. Discussion of examples follows. [redacted] identifies himself as "the Treasurer of the [redacted]" Documentation in the record, including the letterhead used on this letter, shows that [redacted] is the Treasurer of the Florida [redacted], rather than the national-level [redacted] who has also personally employed the petitioner as a horse trainer, states that the petitioner "is one of the most well-known trainers of [redacted] He has established an international reputation throughout his distinguished career. . . . He has trained a number of champion horses." Mr. Fontela adds that the petitioner "is one of the few trainers worldwide to have trained 'Champion of Champion' horses, a designation given only to those horses who have won ten championships."

The petitioner submits letters from several other officials of the Florida [redacted] some of whom offer only general praise of the petitioner's abilities as a horse trainer. Letters from state-level officials may demonstrate statewide acclaim, but not the national or international acclaim which the statute demands. The same can be said of statements from Miami-area horse breeders and owners (who make up the bulk of the witnesses), many of whom have engaged the petitioner's services as a trainer.

Several of these letters contain similar or identical wording. The following paragraph is an example:

> [The petitioner] comes from three generations of horse trainers. His father . . . is recognized as one of the

greatest in his field . . . [and] demonstrates his pride in his son's accomplishments.

The paragraph is found in the letters of [redacted] of [redacted] and [redacted] of [redacted]. Almost exactly the same language appears in the letter of [redacted] of [redacted]

One witness, [redacted], states in a sworn affidavit that the petitioner "has attained tremendous acclaim based upon his achievements as a Master Trainer of [redacted][s]" and that the petitioner "is unquestionably among the most famous Master trainers of the [redacted] He has acquired preeminence in this field as a result of his distinguished achievements." [redacted] does not indicate how he has standing to make such sweeping assertions; he identifies himself only by name. [redacted] made his affidavit in [redacted], the locale supporting the assertion that the petitioner is best known in [redacted].

Other witnesses admit that their expertise lies outside of the petitioner's field but they assert that, to their understanding, the petitioner is well known in his field.

Many of the witnesses offer very strongly-worded assertions of support, to the effect that the petitioner is among the best-known horse trainers in the world. Still, the Service cannot ignore that virtually all of these statements originate from within or near [redacted] While the witnesses may very well sincerely believe the statements they offer, there is no direct evidence that a significant number of horse breeders, owners, and trainers outside of Florida share those opinions.

The director requested further evidence, stating that the petitioner has not established that his activities are nationally known. In response, the petitioner has submitted further background documentation and another witness statement. Counsel asserts "[t]he statement by Executive Director of [redacted], is in and of itself a statement of an expert." We note that, while [redacted] is the executive director of the national [redacted] the association's principal offices are located in [redacted] states that [redacted] "currently has 7,700 members and 32,500 registered [redacted] The Association is responsible for 141 horse shows and events per year." [redacted] asserts that the petitioner "is truly recognized nationally and internationally because of his highly regarded distinguished reputation."

In discussing how he reached this conclusion, [redacted] asserts "I have familiarized myself with [the petitioner's] background and achievements," and discusses the witness letters which had been prepared for submission with this petition.

The background information submitted in response to the director's request identifies a number of regional [redacted] chapters within the United States and in other countries, but no direct evidence that the officials of these other chapters have heard of the petitioner, let alone acknowledge him as an international leader in the field.

The director denied the petition, asserting that the petitioner had failed to establish the requisite sustained national or international acclaim. The director's denial was dated January 7, 2000. On January 24, 2000, counsel responded not with an appeal or a motion to reopen, but rather a "request for reconsideration" unaccompanied by any fee. Counsel subsequently submitted an appeal with fee, which the Service received on February 15, 2000. The director rejected this appeal as untimely, and asserted that the appeal would still be untimely even if considered as a motion to reopen. The petitioner has since filed an appeal to this second decision.

The director's action in denying the motion cannot stand. 8 C.F.R. 103.3(a)(2)(v)(B)(*2*) states that, if an untimely appeal meets the requirements of a motion to reopen as described in 8 C.F.R. 103.5(a)(2), or the requirements of a motion to reconsider as described in 8 C.F.R. 103.5(a)(3), the appeal must be treated as a motion, and a decision must be made on the merits of the case. In re-denying the petition, the director cited 8 C.F.R. 103.5(a)(1) which states "[a]ny motion to reconsider . . . [or] to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen [or reconsider]." The director's reasoning here, that an appeal filed after 30 days also constitutes a motion filed after 30 days, effectively negates 8 C.F.R. 103.3(a)(2)(v)(B)(*2*) because every untimely appeal would automatically become an untimely motion. The very existence of a regulation which converts an untimely appeal to a motion implies that the Service should consider such a motion on its merits. Therefore, while the petitioner could have avoided these complications by submitting a paid appeal with counsel's letter of January 24, 2000,[1] we find that the director did not act properly in refusing to consider the untimely-filed appeal as a motion to reopen. The petitioner's appeal is considered here, on its merits and in its entirety.

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[1]Counsel seems to imply, in an addendum to the second appeal, that the January 24, 2000 "request for reconsideration" preserved the petitioner's appeal rights because the request was submitted during the 30-day appeal period. We reject this argument because the proper forum for alleging error in Service decisions is through the appeal process itself. Certainly, the record prior to January 24, 2000 reveals no Service error so egregious that it would be a further injustice to require the filing of a standard appeal. An informal protest in the form of a letter such as counsel's "request for reconsideration" does not constitute a motion or an appeal, nor does it preserve any rights for the petitioner.

Counsel argues that the director unfairly characterized expert witness statements as "counsel's claims." Given the evidence of record, it is not at all apparent that the director would have approved the petition but for the use of the above phrase.

Counsel acknowledges that, in the horse shows in which the petitioner participates, it is the horse rather than the trainer which attracts the attention of spectators and judges. Nevertheless, counsel asserts, "it is the trainer who develops a quality horse." It remains that the petitioner must establish that he, as an individual, enjoys sustained national or international acclaim in his field. It is not sufficient to show that the petitioner trained several champion horses, if he has not earned a truly national or international reputation for having done so. The petitioner has established a reputation in the [redacted] department of [redacted] and in southern Florida, but nothing in the record reliably demonstrates a wider reputation.

Counsel observes that the petitioner had previously received an O-1 nonimmigrant visa, the requirements for which are largely similar to the requirements for an immigrant visa as an alien of extraordinary ability. Without the documentation accompanying the O-1 visa petition, we cannot determine whether the documents in the two records of proceeding are fundamentally similar, or whether the nonimmigrant visa petition was approved in error. The approval of the O-1 visa petition in no way represents a binding precedent.

New witness letters accompany the appeal. [redacted], a senior certified judge with the [redacted], asserts that "Florida is one of the most important states in the [redacted] industry and competitions." This would explain a concentration of witnesses in Florida, but nevertheless a national reputation cannot rest in one state alone.

The remaining witnesses, all based in Florida, discuss the petitioner's work with individual horses. While the petitioner's work has won the appreciation of the owners of those horses, and the horses themselves are well known among [redacted] enthusiasts, it does not appear that the occupation of [redacted] trainer is amenable to the degree of acclaim which the visa classification demands. The renown of specific show horses does not amount to a "proxy" acclaim for their trainers, if the trainers themselves are not as well known as the horses. Individual testimonials from satisfied horse owners are not demonstrative of wider acclaim.

The petitioner has supplemented the record with information about horse competitions which took place after the petition's filing date. Such information cannot favorably affect the outcome of the petition. See Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa

petition. The petitioner's activities after the filing date cannot retroactively establish his eligibility as of the filing date.

With regard to the petitioner's prospective benefit to the United States, witnesses have asserted that the petitioner's work will generate millions of dollars, but the record contains no documentary support for this assertion. Paso Fino enthusiasts appear, from the record, to constitute a very small proportion of the total U.S. population. The petitioner has been a trainer for decades, and therefore if his work is of significant benefit, ample documentation of past benefit should be readily available, yet it is absent from the record.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the petitioner has distinguished himself as a [redacted] horse trainer and exhibitor to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent in his field, and that he is well regarded among [redacted] enthusiasts in Florida, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field or that he is widely known in his field, even among those who have never worked with him. It has not been shown that the petitioner's entry would substantially benefit prospectively the United States. The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.